

O'SCANNLAIN, Circuit Judge, dissenting.

I must respectfully dissent from the decision to reverse and to remand for resentencing. The majority's conclusion that we cannot determine under the modified categorical approach whether or not the defendant was convicted of an aggravated felony is flatly inconsistent with our decision in *United States v. Velasco-Medina*, 305 F.3d 839 (9th Cir. 2002).

The issue in *Velasco-Medina* was whether or not a prior burglary conviction in California state court was an aggravated felony for purposes of sentencing in subsequent federal proceedings. *Id.* at 850-53. Under the modified categorical approach, we concluded that the conviction qualified as an aggravated felony, for two reasons: First, count one of the information set out the generic elements of burglary. *Id.* at 852. Second, the abstract of judgment indicated that the defendant pled guilty to count one of the information. We held that "[b]y pleading guilty to Count One, Velasco-Medina admitted the facts alleged therein." *Id.* (quoting *United States v. Harris*, 108 F.3d 1107, 1109 (9th Cir. 1997) ("[A] guilty plea conclusively proves the factual allegations contained in the indictment."), and *United States v. Broce*, 488 U.S. 563, 570 (1988) (a plea of guilty is an admission

that the defendant “committed the crime charged against him.”)). Because the information, together with the abstract of judgment “demonstrat[ed] that [the defendant] pleaded guilty to . . . the elements of burglary, the district court properly imposed a sentencing enhancement.” *Id.* at 853.

Precisely the same set of circumstances arise in this case. First, count one of the information sets out the generic terms of a theft offense. Second, the abstract of judgment indicates that Lopez-Caballero pled guilty to the crime charged. Just as in *Velasco-Medina*, “[b]y pleading guilty to Count One,” Lopez-Caballero has “admitted the facts alleged therein.” *Id.* at 852. I therefore do not agree with the majority’s conclusion that we cannot determine whether or not Lopez-Caballero was convicted of an aggravated felony. *Velasco-Medina* is squarely on point, and our decision today cannot be reconciled with the holding in that case.

Thus, I respectfully dissent.